

Senate File 476 - Introduced

SENATE FILE _____
BY COMMITTEE ON WAYS AND MEANS

(SUCCESSOR TO SF 422)
(SUCCESSOR TO SSB 1179)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to a quality assurance assessment program,
2 nursing facility reimbursements, and providing monetary
3 penalties, contingencies, and effective dates.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
5 TLSB 2100SZ 83
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1 1 DIVISION I
1 2 QUALITY ASSURANCE ASSESSMENT PROGRAM
1 3 Section 1. NEW SECTION. 249L.1 TITLE. This chapter
1 4 shall be known and may be cited as the "Quality Assurance
1 5 Assessment Program".
1 6 Sec. 2. NEW SECTION. 249L.2 DEFINITIONS. As used in
1 7 this chapter, unless the context otherwise requires:
1 8 1. "Department" means the department of human services.
1 9 2. "Direct care worker" means an employee of a nursing
1 10 facility who holds a nursing assistant certification, is
1 11 employed for the purpose of nursing assistance, and provides
1 12 direct care to residents, regardless of the employee's job
1 13 title.
1 14 3. "Gross revenue" means all revenue reported by the
1 15 nursing facility for patient care, room, board and services,
1 16 but does not include contractual adjustments, bad debt,
1 17 Medicare revenue, or revenue derived from sources other than
1 18 nursing facility operations including but not limited to
1 19 nonoperating revenue and other operating revenue.
1 20 4. "Medically indigent individual" means an individual
1 21 eligible for coverage under the medical assistance program who
1 22 is a resident of a Medicaid-certified nursing facility.
1 23 5. "Nonoperating revenue" means income from activities not
1 24 relating directly to the day-to-day operations of a nursing
1 25 facility such as gains on the disposal of a facility's assets,
1 26 dividends, and interest from security investments, gifts,
1 27 grants, and endowments.
1 28 6. "Nursing facility" means a licensed nursing facility as
1 29 defined in section 135C.1 that is a freestanding facility or a
1 30 nursing facility operated by a hospital licensed pursuant to
1 31 chapter 135B, but does not include a distinct-part skilled
1 32 nursing unit or a swing-bed unit operated by a hospital, or a
1 33 nursing facility owned by the state or federal government or
1 34 other governmental unit.
1 35 7. "Other operating revenue" means income from nonpatient
2 1 care services to patients and from sales to and activities for
2 2 persons other than patients which may include but are not
2 3 limited to such activities as providing personal laundry
2 4 service for patients, providing meals to persons other than
2 5 patients, gift shop sales, or vending machine commissions.
2 6 8. "Patient day" means a calendar day of care provided to
2 7 an individual resident of a nursing facility that is not
2 8 reimbursed under Medicare, including the date of admission but
2 9 not including the date of discharge, unless the dates of
2 10 admission and discharge occur on the same day, in which case
2 11 the resulting number of patient days is one patient day.
2 12 9. "Uniform tax requirement waiver" means a waiver of the
2 13 uniform tax requirement for permissible health care-related
2 14 taxes as provided in 42 C.F.R. } 433.68(e)(2)(i) and (ii).

2 15 Sec. 3. NEW SECTION. 249L.3 QUALITY ASSURANCE ASSESSMENT
2 16 == IMPOSED == COLLECTION == DEPOSIT == DOCUMENTATION == CIVIL
2 17 ACTIONS.

2 18 1. a. A nursing facility in this state shall be assessed
2 19 a quality assurance assessment for each patient day for the
2 20 preceding quarter.

2 21 b. The quality assurance assessment shall be implemented
2 22 as a broad-based health care-related tax as defined in 42
2 23 U.S.C. } 1396b(w)(3)(B).

2 24 c. The quality assurance assessment shall be imposed
2 25 uniformly upon all nursing facilities, unless otherwise
2 26 provided in this chapter.

2 27 d. The aggregate quality assurance assessments imposed
2 28 under this chapter shall not exceed the lower of three percent
2 29 of the aggregate non-Medicare revenues of a nursing facility
2 30 or the maximum amount that may be assessed pursuant to the
2 31 indirect guarantee threshold as established pursuant to 42
2 32 C.F.R. } 433.68(f)(3)(i), and shall be stated on a per patient
2 33 day basis.

2 34 2. The quality assurance assessment shall be paid by each
2 35 nursing facility to the department on a quarterly basis after
3 1 the nursing facility's medical assistance payment rates are
3 2 adjusted to include funds appropriated from the quality
3 3 assurance trust fund for that purpose. The department shall
3 4 prepare and distribute a form upon which nursing facilities
3 5 shall calculate and report the quality assurance assessment.
3 6 A nursing facility shall submit the completed form with the
3 7 assessment amount no later than thirty days following the end
3 8 of each calendar quarter.

3 9 3. A nursing facility shall retain and preserve for a
3 10 period of three years such books and records as may be
3 11 necessary to determine the amount of the quality assurance
3 12 assessment for which the nursing facility is liable under this
3 13 chapter. The department may inspect and copy the books and
3 14 records of a nursing facility for the purpose of auditing the
3 15 calculation of the quality assurance assessment. All
3 16 information obtained by the department under this subsection
3 17 is confidential and does not constitute a public record.

3 18 4. The department shall collect the quality assurance
3 19 assessment imposed and shall deposit all revenues collected in
3 20 the quality assurance trust fund created in section 249L.4.

3 21 5. If the department determines that a nursing facility
3 22 has underpaid or overpaid the quality assurance assessment,
3 23 the department shall notify the nursing facility of the amount
3 24 of the unpaid quality assurance assessment or refund due.
3 25 Such payment or refund shall be due or refunded within thirty
3 26 days of the issuance of the notice.

3 27 6. a. A nursing facility that fails to pay the quality
3 28 assurance assessment within the time frame specified in this
3 29 section shall pay, in addition to the outstanding quality
3 30 assurance assessment, a penalty of one and five-tenths percent
3 31 of the quality assurance assessment amount owed for each month
3 32 or portion of each month that the payment is overdue.
3 33 However, if the department determines that good cause is shown
3 34 for failure to comply with payment of the quality assurance
3 35 assessment, the department shall waive the penalty or a
4 1 portion of the penalty.

4 2 b. If a quality assurance assessment has not been received
4 3 by the department by the last day of the month in which the
4 4 payment is due, the department shall withhold an amount equal
4 5 to the quality assurance assessment and penalty owed from any
4 6 payment due such nursing facility under the medical assistance
4 7 program.

4 8 c. The quality assurance assessment imposed under this
4 9 chapter constitutes a debt due the state and may be collected
4 10 by civil action, including but not limited to the filing of
4 11 tax liens, and any other method provided for by law.

4 12 d. Any penalty collected pursuant to this subsection shall
4 13 be credited to the quality assurance trust fund.

4 14 7. If federal financial participation to match the quality
4 15 assurance assessments made under this section becomes
4 16 unavailable under federal law, the department shall terminate
4 17 the imposition of the assessments beginning on the date the
4 18 federal statutory, regulatory, or interpretive change takes
4 19 effect.

4 20 Sec. 4. NEW SECTION. 249L.4 QUALITY ASSURANCE TRUST FUND
4 21 == LIMITATIONS OF USE == REIMBURSEMENT ADJUSTMENTS TO NURSING
4 22 FACILITIES.

4 23 1. A quality assurance trust fund is created in the state
4 24 treasury under the authority of the department. Moneys
4 25 received through the collection of the nursing facility

4 26 quality assurance assessment imposed under this chapter and
4 27 any other moneys specified for deposit in the trust fund shall
4 28 be deposited in the trust fund.

4 29 2. Moneys in the trust fund shall be used, subject to
4 30 their appropriation by the general assembly, by the department
4 31 only for reimbursement of services for which federal financial
4 32 participation under the medical assistance program is
4 33 available to match state funds. Any moneys appropriated from
4 34 the trust fund for reimbursement of nursing facilities, in
4 35 addition to the quality assurance assessment pass through and
5 1 the quality assurance assessment rate add-on which shall be
5 2 used as specified in subsection 5, paragraph "b", shall be
5 3 used in a manner such that no less than thirty-five percent of
5 4 the amount received by a nursing facility is used for
5 5 increases in compensation and costs of employment for direct
5 6 care workers, and no less than sixty percent of the total is
5 7 used to increase compensation and costs of employment for all
5 8 nursing facility staff. For the purposes of use of such
5 9 funds, "direct care worker", "nursing facility staff",
5 10 "increases in compensation", and "costs of employment" mean as
5 11 defined or specified in this chapter.

5 12 3. The trust fund shall be separate from the general fund
5 13 of the state and shall not be considered part of the general
5 14 fund of the state. The moneys in the trust fund shall not be
5 15 considered revenue of the state, but rather shall be funds of
5 16 the quality assurance assessment program. The moneys
5 17 deposited in the trust fund are not subject to section 8.33
5 18 and shall not be transferred, used, obligated, appropriated,
5 19 or otherwise encumbered, except to provide for the purposes of
5 20 this chapter. Notwithstanding section 12C.7, subsection 2,
5 21 interest or earnings on moneys deposited in the trust fund
5 22 shall be credited to the trust fund.

5 23 4. The department shall adopt rules pursuant to chapter
5 24 17A to administer the trust fund and reimbursements made from
5 25 the trust fund.

5 26 5. a. The determination of medical assistance
5 27 reimbursements to nursing facilities shall continue to be
5 28 calculated in accordance with the modified price-based
5 29 case-mix reimbursement system as specified in 2001 Iowa Acts,
5 30 chapter 192, section 4, subsection 2, paragraph "c". In
5 31 addition, moneys that are appropriated from the trust fund for
5 32 reimbursements to nursing facilities that serve the medically
5 33 indigent shall be used to provide the following nursing
5 34 facility reimbursement rate adjustment increases within the
5 35 parameters specified:

6 1 (1) A quality assurance assessment pass-through. This
6 2 rate add-on shall account for the cost incurred by the nursing
6 3 facility in paying the quality assurance assessment, but only
6 4 with respect to the pro rata portion of the assessment that
6 5 correlates with the patient days in the nursing facility that
6 6 are attributable to medically indigent residents.

6 7 (2) A quality assurance assessment rate add-on. This rate
6 8 add-on shall be calculated on a per-patient-day basis for
6 9 medically indigent residents. The amount paid to a nursing
6 10 facility as a quality assurance assessment rate add-on shall
6 11 be ten dollars per patient day.

6 12 (3) Nursing facility payments for rebasing pursuant to
6 13 2001 Iowa Acts, chapter 192, section 4, subsection 3,
6 14 paragraph "a", subparagraph (2).

6 15 b. (1) It is the intent of the general assembly that
6 16 priority in expenditure of rate adjustment increases provided
6 17 to nursing facilities through the quality assurance assessment
6 18 be related to the compensation and costs of employment for
6 19 nursing facility staff.

6 20 (2) If the sum of the quality assurance assessment
6 21 pass-through and the quality assurance assessment rate add-on
6 22 is greater than the total cost incurred by a nursing facility
6 23 in payment of the quality assurance assessment, no less than
6 24 thirty-five percent of the difference shall be used to
6 25 increase compensation and costs of employment for direct care
6 26 workers and no less than sixty percent of the difference shall
6 27 be used to increase compensation and costs of employment for
6 28 all nursing facility staff.

6 29 (3) For the purposes of determining what constitutes
6 30 increases in compensation and costs of employment the
6 31 following shall apply:

6 32 (a) Increases in compensation shall include but are not
6 33 limited to starting hourly wages, average hourly wages paid,
6 34 and total wages including both productive and nonproductive
6 35 wages, and as specified by rule of the department.

7 1 (b) Increases in total costs of employment shall include

7 2 but are not limited to costs of benefit programs with specific
7 3 reporting for group health plans, group retirement plans,
7 4 leave benefit plans, employee assistance programs, payroll
7 5 taxes, workers' compensation, training, education, career
7 6 development programs, tuition reimbursement, transportation,
7 7 and child care, and as specified by rule of the department.

7 8 (c) Direct care workers and nursing facility staff do not
7 9 include nursing facility administrators, administrative staff,
7 10 or home office staff.

7 11 (4) Each nursing facility shall submit to the department,
7 12 information in a form as specified by the department and
7 13 developed in cooperation with representatives of the Iowa
7 14 caregivers association, the Iowa health care association, the
7 15 Iowa association of homes and services for the aging, and the
7 16 AARP Iowa chapter, that demonstrates compliance by the nursing
7 17 facility with the requirements for use of the rate adjustment
7 18 increases and other reimbursements provided to nursing
7 19 facilities through the quality assurance assessment.

7 20 6. The department shall report annually to the general
7 21 assembly regarding the use of moneys deposited in the trust
7 22 fund and appropriated to the department.

7 23 Sec. 5. EFFECTIVE AND IMPLEMENTATION DATES. This division
7 24 of this Act takes effect upon enactment. However, actual
7 25 implementation of this division of this Act shall be in
7 26 accordance with the following:

7 27 1. If the department in consultation with the governor
7 28 determines that the requests relating to waivers and the
7 29 medical assistance state plan amendment as described in
7 30 division II of this Act would adversely affect the existing
7 31 IowaCare waiver, and the department does not submit such
7 32 requests to the United States department of health and human
7 33 services, this division of this Act shall not be implemented.

7 34 2. If the department in consultation with the governor
7 35 determines that the requests relating to waivers and the
8 1 medical assistance state plan amendment as described in
8 2 division II of this Act would not adversely affect the
8 3 existing IowaCare waiver, and does submit such requests to the
8 4 United States department of health and human services, this
8 5 division of this Act shall only be implemented if the
8 6 department receives approval of the requests relating to the
8 7 waivers and medical assistance state plan amendment as
8 8 specified in division II of this Act, and in accordance with
8 9 the provisions specified in division II of this Act.

8 10 DIVISION II
8 11 DIRECTIVES TO DEPARTMENT OF HUMAN SERVICES
8 12 AND CONTINGENCIES

8 13 Sec. 6. DEFINITIONS. As used in this division of this
8 14 Act, "department", "nursing facility", "patient day", and
8 15 "uniform tax requirement waiver" mean as defined in section
8 16 249L.2, as enacted in this Act.

8 17 Sec. 7. DIRECTIVES TO DEPARTMENT OF HUMAN SERVICES. No
8 18 later than June 30, 2009, unless the department in
8 19 consultation with the governor determines that such requests
8 20 will adversely affect the existing IowaCare waiver, the
8 21 department shall request approval of all of the following from
8 22 the United States department of health and human services:

8 23 1. An amendment to the terms and conditions of the
8 24 IowaCare waiver to eliminate the provision in which the state
8 25 agrees to refrain from imposing any provider tax during the
8 26 pendency of the demonstration waiver for IowaCare.

8 27 2. A uniform tax requirement waiver to allow the state to
8 28 impose varying levels of taxation on providers based on
8 29 specified criteria. It is the intent of the general assembly
8 30 that the uniform tax requirement waiver sought by the
8 31 department be structured to minimize the negative fiscal
8 32 impact on nursing facilities.

8 33 3. A medical assistance state plan amendment to revise the
8 34 state nursing facility reimbursement methodology to, in part,
8 35 allow the medical assistance program to reimburse nursing
9 1 facilities for the medical assistance portion of the provider
9 2 tax paid by the nursing facilities.

9 3 Sec. 8. CONTINGENCY PROVISIONS. The quality assurance
9 4 assessment created in this Act shall accrue beginning on the
9 5 first day of the calendar quarter following the date of
9 6 approval of the state plan amendment. However, accrued
9 7 quality assurance assessments shall not be collected prior to
9 8 completion of both of the following:

9 9 1. The approval of the waivers and the medical assistance
9 10 state plan amendment by the centers for Medicare and Medicaid
9 11 services of the United States department of health and human
9 12 services.

9 13 2. An appropriation by the general assembly to implement
9 14 the nursing facility provider reimbursements as provided in
9 15 this Act.
9 16 Sec. 9. EFFECTIVE DATE. This division of this Act, being
9 17 deemed of immediate importance, takes effect upon enactment.

9 18 EXPLANATION

9 19 Division I of this bill creates a quality assurance
9 20 assessment imposed on nursing facilities and includes a
9 21 quality assurance assessment fund.

9 22 The bill imposes a quality assurance assessment on nursing
9 23 facilities for each patient day. The fee is to be
9 24 broad-based, imposed uniformly unless otherwise provided, and
9 25 is not to exceed the lower of 3 percent of the aggregate
9 26 non-Medicare revenues of a nursing facility or the maximum
9 27 amount that may be assessed pursuant to the indirect guarantee
9 28 threshold as established under federal law. The quality
9 29 assurance assessment is to be paid by each nursing facility to
9 30 the department of human services (DHS) on a quarterly basis
9 31 alternative nursing facility rates are adjusted to include
9 32 funds appropriated from the quality assurance trust fund for
9 33 that purpose. DHS is to prepare and distribute a form upon
9 34 which nursing facilities shall calculate and report the
9 35 quality assurance assessment, and each nursing facility is
10 1 required to submit the completed form with the assessment
10 2 amount no later than 30 days following the end of each
10 3 calendar quarter. The bill includes requirements for
10 4 recordkeeping and access to records for the purposes of
10 5 auditing. The bill provides for payments or refunds for
10 6 underpayments or overpayments and also provides penalties and
10 7 collection measures for nonpayment by nursing facilities in a
10 8 timely manner.

10 9 Once DHS collects the assessments, the revenue is to be
10 10 deposited in the quality assurance trust fund established in
10 11 the bill. The fund is created in the state treasury under the
10 12 authority of DHS. Moneys in the trust fund are required to be
10 13 used, subject to their appropriation by the general assembly,
10 14 only for reimbursement of services for which federal financial
10 15 participation under Medicaid is available to match state
10 16 funds. The bill also specifies certain percentages of the
10 17 funds as reimbursements to nursing facilities which must be
10 18 used for direct care worker and nursing facility staff
10 19 compensation and costs of employment. The bill directs DHS to
10 20 adopt rules pursuant to Code chapter 17A to administer the
10 21 trust fund and reimbursements made from the trust fund. The
10 22 bill provides that nursing facilities are to continue to be
10 23 reimbursed under the modified price-based case-mix
10 24 reimbursement methodology originally created in 2001. In
10 25 addition to the amount of reimbursement provided under the
10 26 continuation of the existing formula, the moneys in the fund
10 27 are to be used to provide supplemental payments to nursing
10 28 facilities including: a quality assurance assessment
10 29 pass-through; a quality assurance assessment rate add-on; and
10 30 for nursing facility payments for rebasing. The bill provides
10 31 a methodology for providing these rate adjustments. The bill
10 32 provides that it is the intent of the general assembly that
10 33 priority in expenditure of the rate adjustment increases be in
10 34 relation to the compensation and costs of employment for
10 35 nursing facility staff, and provides minimum percentage
11 1 amounts of such rate adjustment increases that must be used
11 2 for these purposes. The bill directs each nursing facility to
11 3 submit information to demonstrate compliance with the
11 4 requirements for use of the rate adjustment increases. DHS is
11 5 required to report annually to the general assembly regarding
11 6 the use of moneys deposited in the trust fund and appropriated
11 7 to DHS.

11 8 Division I of the bill takes effect upon enactment. The
11 9 bill directs that division I of the bill is only to be
11 10 implemented if requests for the necessary waivers and state
11 11 plan amendment from the federal government do not adversely
11 12 affect the existing IowaCare waiver and only following receipt
11 13 of approval of the waivers and state plan amendment as
11 14 specified in division II of the bill.

11 15 Division II of the bill provides directives to DHS and
11 16 contingencies. The bill directs that no later than June 30,
11 17 2009, if it is determined that such requests will not
11 18 adversely affect the existing IowaCare waiver, DHS shall
11 19 request waivers and a state plan amendment from the centers
11 20 for Medicare and Medicaid services of the United States
11 21 department of health and human services. The uniform tax
11 22 requirement waiver is to be structured to minimize the
11 23 negative fiscal impact on nursing facilities. Division II

11 24 also includes contingency provisions relating to accrual and
11 25 collection of the assessment. Under the bill, the assessment
11 26 would only accrue beginning on the first day of the calendar
11 27 quarter following the date of approval of the medical
11 28 assistance state plan amendment. The accrued assessments
11 29 would not, however, be collected prior to completion of both
11 30 the approval of the waivers and state plan amendment and
11 31 provision of an appropriation by the general assembly to
11 32 implement the nursing facility provider reimbursements as
11 33 provided in the bill.
11 34 Division II of the bill takes effect upon enactment.
11 35 LSB 2100SZ 83
12 1 pf/rj/8